



C.A. 361/95

ii)

-2000 6-83

APPEAL OF PRISONER

1685/45

Name

राम शंकर नान्दू विष्णु

Residence

सोमरु साम साकिन रकेली बाना लालखानपुर

Age

26 वर्ष

Sentenced

आजीवन कारावास

on

9/12/94

Under section

74 व सुभा 1508-1510
302, 201, 9, 1-C

II अपर सग नामापी अप सरगुजा (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days the case may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be bound to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement 9/12/94
- 2 Date of which copy received 1/2/95
- 3 Date on which Appeal sent 2/95
- 4 whether the prisoner wishes to be represented or not - Yes / No.

1685/45

Name

राम शंकर अप सोमरु साम

arrested in

केडीय

Jail

रामपुर (म.प्र.)

1990

Dated

1/2/95

1995

8/2/95

forwarded to the CHIEF JUDICIAL MAGISTRATE

अतिरिक्त पंजीयक महेन्द्र मारंगीय 324
सोमरु साम (म.प्र.)

under which a copy of order passed in the case for favour of transmission to the Appellate Court.

Superintendent

Date of receipt in C. J. M.'s office

Date of receipt record to accompany

Memo of Appeal of the Appellant

No

JABALPUR

Dated

1995

Forwarded to the

17 FEB 1995

Reg. No. 128

Receipt Clerk

High Court, Jabalpur

C. J. Magistrate

forwarded to Appellate Court

(P. T. O.)

9-12-94 1685/45

Dumra 22

Jabalpur 31

Jabalpur 31

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आदेश का दिनांक आदेश क्रमिक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench :</u> <u>Hon'ble Shri Justice L.C. Bhadoo, J &</u> <u>Hon'ble Shri Justice V.K Shrivastava, J.</u> <u>08.12.2005</u> Shri Arun Kocher, counsel for the appellant. Shri GK Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, Panel lawyer for the State. Oral judgment. This appeal is directed against the judgment of conviction and sentence dated 09.12.1994 passed by the Second Additional Sessions Judge, Ambikapur in Sessions Trial No.27/94 whereby learned Additional Sessions Judge after holding the accused / appellant guilty for commission of the offence under Section 302 and 201 of the IPC, convicted and sentenced him to undergo imprisonment for life and RI for seven years respectively and to pay fine of Rs.500/- and in default of payment of fine to further undergo RI for six months. The case of the prosecution, in brief, is that deceased Bigani Bai was married to the accused / appellant Ram Raj of village Rakeli 6-7 years prior to the date of incident i.e. intervening night of 28th and 29th October 1993. The deceased and the accused / appellant	

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	were residing separately since one month from the date of incident. Deceased Bigani Bai and Ram Raj had quarreled in the evening. In the night on hearing the cries of the child, when Ram Raj tried to wake up the Bigani Bai, she did not wake up then he attacked her with a lathi, as a result of which Bigani Bai died. However, Ram Raj said that Bigani Bai had died on account of pain in her stomach. The villagers sent this information to the parents of the deceased. On receiving the same, father of the deceased Somarsai (PW-1) came and saw that face of the deceased was in swollen condition and clotted blood was present on the mouth. After seeing the body, Somarsai enquired from the accused / appellant Ram Raj and asked him to report the matter to the police before burying the dead body. However, Ram Raj buried the Bigani Bai, his wife. On this, Somarsai made a report (Ex.P/1) to the Station House Officer at Police station Lakhanpur on 1st November 1993, raising doubt about the manner in which his daughter died, upon which the inquest (Ex.P/6) was initiated under Section 174 of the Cr.P.C. A request (Ex.P/7) was made to the Sub-Divisional Officer and under orders of the SDO. The Naib Tahasildar namely Shyam Singh Pekra, got the dead body of Bigani Bai exhumed in presence of villagers on 3rd November 1993 under Ex.P/17. Panchnama of the dead body (Ex.P/3) was prepared after giving notice (Ex.P/2) to the Panchas and the body was sent for	

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	postmortem to the Primary Health Center, Udaipur, where Dr.AR Jayant (PW-6) conducted postmortem. On his examination, it was found that the mandible bone was fractured and on opening the body, liver was found ruptured. Doctor opined (Ex.P/15) that cause of death was internal haemorrhage due to rupture of liver which is homicidal in nature. He gave his report (Ex.P/16) to this effect. During the course of the investigation under the police custody, accused / appellant gave memorandum (Ex.P/4) regarding the place where he kept the lathi, the weapon of the offence and in pursuance of the same Shri NP Upadhyay Sub-Inspector of Police (PW-5) recovered the lathi (Ex.P/5). SHO Lakhanpur gave Dehati Nalisi (Ex.P/9), on which first information report (Ex.P/10) was registered on 05th November 1993. The SHO prepared site plan (Ex.P/13). After completion of the investigation, charge-sheet was filed against the accused / appellant for commission of the offence under Sections 302 and 201 of the IPC in the Court of Judicial Magistrate First Class Ambikapur, who in turn committed the case for trial to the Sessions Judge Ambikapur, from where the Second Additional Sessions Judge received the case on transfer. In order to prove the offence against the accused/ appellant, prosecution examined seven witnesses. The statement of the	

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	accused / appellant was recorded under Section 313 of the Cr.P.C in which he denied the prosecution evidence and stated that the witnesses are brothers of the deceased that is why they have deposed against him. He also produced two witnesses namely Dharmsai - DW1 and Dakhalsai - DW2 in his defence. Learned Additional Sessions Judge, after hearing the argument of both the parties, convicted and sentenced the accused / appellant as mentioned in the earlier part of this judgment. We have heard Shri Arun Kocher, learned counsel for the appellant and Shri GK Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, Panel lawyer for the State. Learned counsel for the accused/appellant argued that immediately after death of Bigani Bai the family members of the deceased were informed and father of the deceased Somarsai and other members were present at the time of burial ceremony. If they were having any doubt about the cause of death, they should have reported the matter immediately; but they reported the matter after three days. Therefore, no credence can be given to the report. He further argued that the whole case is doubtful as	

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	there is no eyewitness and even the circumstantial evidence upon which the prosecution has placed its reliance has not established the crime against the accused / appellant. Learned counsel relied upon certain judgments and the same will be referred in the later part of the judgment. On the other hand, Shri Akhil Mishra supported the judgment of the trial Court. The law on the point of delay in lodging report is settled that when delay has occasioned for implication of the accused in a false case, then the delay becomes fatal in the Criminal case and if the delay has not occasioned for cooking up false case against the accused, then the case of the prosecution can not be thrown out if through evidence, the prosecution has been able to prove the case against the accused / appellant beyond reasonable doubt. There is no doubt that there is no direct and ocular evidence in this case. The whole case rests on the circumstantial evidence. The Hon'ble Apex Court in the case of <u>Nesar Ahmed Vs State Bihar reported in AIR 2001 Supreme Court 2416</u> has held that, in a case based on circumstantial evidence, before the Court can record	

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	conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused. It is on the basis of these principles that we shall examine the circumstantial evidence relied upon by the prosecution in this case. Now we shall proceed to examine the evidence adduced by the prosecution. It is an admitted position that the death of the deceased took place in the intervening night of 28th and 29th October 1993 in the house of the accused / appellant, he sent the information to the parents of the deceased, they came and body was buried. Somarsai - PW1, father of the deceased raised doubt about the cause of death because the accused informed that Bigani Bai had died on account of stomach pain; but they noticed that face of Bigani Bai was in swollen condition and clotted blood was present on the mouth. However, the body was buried upon which Somarsai lodged a report (Ex.P/1) at the Police station Lakhanpur. On this, an inquest enquiry under the orders of SDO was initiated. Dead body was	

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	exhumed and postmortem of the body was conducted by Dr.AR Jayant (PW-6) who has stated that on 3rd November 1993 he conducted postmortem along with Dr.T.M. Mahaleswar and found that Mandible bone of the deceased was fractured and liver was found ruptured and the cause of death was internal haemorrhage due to rupture of liver. His report is Ex.P/15. The above opinion of the doctor has not been dis-credited. Therefore, in view of the above findings of the doctor, the claim of the accused / appellant was belied because Bigani Bai died on account of rupture of liver, the mandible bone of Bigani Bai was found fractured and no explanation what so ever was offered by the accused / appellant for that. The evidence of PW1 Somarsai, PW2 Dhannuram and PW3 Annuram is corroborated by the evidence of PW6 Dr.AR Jayant to the extent that when they reached and saw the dead body of Bigani Bai, clotted blood was present on the mouth and the face was in swollen condition. Now, we shall examine this medical evidence in the light of the previous conduct of the accused / appellant, Somarsai PW1 has categorically stated that the accused used to quarrel with his daughter and she stayed some time with him and after 3-4 months, he, along with Ramnath and Sunder went and left Bigani Bai at the	

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	residence of the accused. PW1 Somarsai and PW3 Annuram have stated that on seeing the swollen condition of face and clotted blood on the mouth of the deceased, they asked the accused / appellant not to bury the dead body and further asked him to report the matter to the police; but he did not agree to their suggestion and buried the body. This conduct of the accused further lends support to the fact that as the death of Bigani Bai was on account of the assault, therefore, he was not ready to report the matter to the police. No explanation what so ever, has come from the side of the accused regarding the fracture of the mandible bone and rupture of the liver, because, death of the deceased was caused in the house of the accused / appellant, therefore, he was the right person to explain the circumstance under which these injuries were found on the body of the deceased. During the police custody, the accused also gave memorandum (Ex.P/4) regarding the weapon of the offence i.e. lathi that he used to assault Bigani Bai and the same was recovered at his instance under Ex.P/5. Therefore, in the background of the above evidence, if we look into the delay in reporting the matter to the police, it is an admitted position that Somarsai, father of the deceased was an illiterate person. He, along with his son PW3 Annuram, immediately on seeing the body, asked the accused / appellant to report the matter to the police. When he	

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	failed to do so, on 1st November 1993, Somarsai lodged the report at the police station Lakhanpur. In cross examination of these witnesses, nothing has come on record that Somarsai or his two sons, brothers of the deceased had any enmity against the accused / appellant that is why they had implicated the accused in a false case. Therefore, we are of the considered opinion that delay in reporting the matter to the police, in view of the above circumstances and clinching evidence available on record was not fatal. In view of the medical evidence, death of Bigani Bai was homicidal in nature. The evidence of Defence Witness in view of medical evidence can not be given credence. Now, coming to the judgments cited by the counsel for the accused / appellant, the first judgment cited by the learned counsel is <u>Amrut Vs State of Maharashtra</u> reported in Divorce & Matrimonial cases 2002 II Pg 168. This was a case of the murder of wife after pouring kerosene and setting her on fire. The above case is of no help to the accused / appellant for the reason that in this case, the deceased did not implicate the accused in her dying declaration and the Court reached to the conclusion that the father of the deceased persuaded her to give statement against the	

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	accused / appellant and further the Court reached to the conclusion that it is a case of suppression of true facts from Court and tampering the investigation. The second judgment cited by the learned counsel for the accused / appellant is that <u>Arvind Singh Vs State of Bihar</u> reported in DMC 2001 I Pg 734. In this case also the Apex Court reached to the conclusion that the dying declaration not effected before any doctor or any independent witness but to the mother of the deceased, interested witness was not true. The Court further reached to the conclusion that because of extensive burns, the deceased can not survive beyond 10 minutes, therefore, the dying declaration was not relied upon. The other judgment relied upon by the counsel for the accused / appellant was <u>Manohar Vs State of MP</u> reported in DMC 1999 I Pg 638. The Court after scrutinizing the evidence, reached to the conclusion that the deceased herself sprinkled kerosene oil and put herself on fire. The accused being frightened of the incident, ran away from the spot, therefore, that conduct of the accused can not take place to prove that the appellant caused the death of the deceased and the Court observed that the deceased was pressing for marriage as her family members were objecting appellant's coming to their house and the appellant was not agreeable for the marriage, hence, the deceased	

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	put herself on fire. Therefore, in view of the above facts, this case is also of no help to the present accused / appellant. The case of <u>Kishan Lal Vs State of Rajasthan</u> reported in DMC 1999 II pg No.439 also relates to case of dying declaration. It was in the facts and circumstances that has not been believed by the Apex Court and as per the doctor's opinion, the death was on account of syncope which was attributable to heart, and not because of the burns because there were no deep burns. The Doctor's report does not record even deep burns on the body of the deceased. Therefore, the Court reached that no inference could be drawn that the deceased died on account of the alleged burn injuries. In view of the above facts, this case is also of no help to the accused / appellant. Similarly, the other judgment relied upon by the counsel for the accused / appellant is also of no help. In the case <u>Jaipal Vs State of Haryana</u> reported in DMC 2002 II pg 682, the Court held that none of the symptoms was suggesting administration of Aluminium Phosphide (celphos) and the case of the prosecution was that the accused administered celphos to the deceased. For the foregoing reasons, we are of the considered opinion in holding the accused / appellant guilty for commission of the murder	

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	of Bigani Bai is based on clinching circumstantial evidence and same does not require any interference of this Court. As far as the conviction under Section 201 is concerned, as the appellant, ignoring the suggestion of Somarsai PW1 & PW3 Annuram, buried the body in order to save himself from the punishment and that amounts to causing dis-appearance of the evidence of the crime. Therefore, he has been rightly convicted under Section 201 of the IPC. In the result, we do not find any substance in this appeal; hence, it is liable to be dismissed and is accordingly dismissed. Sd/- L.C.BHADOO Judge	Sd/- V.K.Shrivastava Judge

padma

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